THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.14687 OF 2004

16.9.2005

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Between:

1. M/s.Kondapally Transport, rep. by its Director,

Sri K.Satyanarayana Rao (M.D.) & Sri Srinivasa

(Executive Director), Near Benz Circle, Vijayawada.

And others

… Petitioners

AND

1. The Central Registrar/Arbitrator, A.P. Mahesh

Coop. Urbgan Bank Ltd., Hyderabad and another.

… Respondents

ORDER:

The first petitioner is a Concern engaged in transport business. Petitioners 2 to 4 are its Directors. The first petitioner availed a sum of Rs.50,00,000/- (Rupees fifty lakh only) as loan from the second respondent in October, 1999 as overdraft facility. Whatever the reason the petitioners could not discharge the loan and the second respondent Bank, therefore, demanded repayment of loan. The petitioners did not discharge the debt. Therefore, the second respondent, which is a Cooperative Urban Bank registered under Multi State Cooperative Societies Act, 2002 (for short, the Act) initiated proceedings before the first respondent under Section 84 of the Act. After conducting necessary arbitration proceedings, the first respondent passed award being RC.No.24/05-03 dated 28.04.2004 directing the petitioners to pay a sum of Rs.27,63,448/- as on 29.02.2004 with further interest from 01.03.2004 at contract rate of interest. Two months time was granted for redemption of the properties mortgaged to the second respondent as security. Assailing the said award, the petitioners filed the present writ petition.

This Court while issuing Notice Before Admission passed interim orders staying all further proceedings pursuant to impugned award. The second respondent moved an application being W.V.M.P.No.2895 of 2004 for vacating interim order. The matter was heard at interlocutory stage and is being disposed of by this order.

The learned Standing Counsel for second respondent Bank, Sri Murlinarayan

Bung, raised a preliminary objection as to maintainability of the writ petition. According to the learned counsel, any award passed under Section 84 of the Act has to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, Arbitration Act) and therefore this writ petition is not maintainable. The learned counsel for the petitioners,
Sri P.R.Prasad, relies on **ABL International Limited v Export Credit Guarantee Corporation of India Limited** and **South Eastern Coalfields Limited v State of M.P.,** in support of the contention that the petitioners are aggrieved by the award insofar as the interest part of the award and therefore, this Court under Article 226 of Constitution of India can go into the matter.

The submission of the learned counsel for the petitioners cannot be accepted. Multi State Cooperative Societies Act is a comprehensive enactment providing for recovery of loans by the Cooperative Urban Banks registered under the said Act, and the redressal mechanism for the party aggrieved by the award. Section 84 of the Act enables the Central Registrar/Arbitrator to adjudicate the arbitration case filed by the Cooperative Bank and pass an award following the procedure contemplated under the Arbitration Act. Section 84(5) of the Act reads as under.

> Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and conciliation Act, 1996.

A plain reading of the above provision would show that the procedure to be adopted by the Central Registrar is a procedure as contained in Arbitration Act. Therefore, whenever award is passed, an aggrieved person has to avail the remedy provided under Section 34 of the Arbitration Act. Such person can have recourse to Civil Court against the arbitral award and the award may be set aside by the Court on any of the grounds mentioned in sub-section (2) of Section 34 of the Arbitration Act.

The decisions cited by the learned counsel for the petitioners laid down that in certain circumstances, notwithstanding the availability of effective alternative remedy, the Court can exercise power under Article 226 of Constitution of India. Here a reference may be made to **State of Orissa v Gokulananda Jena**. In the said case, State of Orissa challenged the validity of Order made by the Designated Judge appointing an arbitrator under Section 11(6) of the Arbitration Act. The Division Bench of the Orissa High Court came to the conclusion that the writ petition is not maintainable. Reliance was placed on decision of the Supreme Court in **Konkan Railway Corporation Limited v Rani Construction (P) Limited**. On Appeal by State of Orissa, the Supreme Court while observing that the order of the Designated Judge appointing arbitrator can also be challenged before the High Court under Article 226 of Constitution of India. However, declined to interfere in the matter observing as under.

> However, we must notice that in view of Section 16 read with Sections 12 and 13 of the Act, as interpreted by the Constitution Bench of this Court in **Konkan Railway** almost all disputes which could be presently contemplated

can be raised and agitated before the arbitrator appointed by the Designated Judge under Section 11(6) of the Act. From the perusal of the said provisions of the Act, it is clear that there is hardly any area of dispute which cannot be decided by the arbitrator appointed by the Designated Judge. If that be so, since an alternative efficacious remedy is available before the arbitrator, a writ court normally would not entertain a challenge to an order of the Designated Judge made under Section 11(6) of the Act which includes considering the question of jurisdiction of the arbitrator himself. Therefore, in our view even though a writ petition under Article 226 of the Constitution is available to an aggrieved party, ground available for challenge in such a petition is limited because of the alternative remedy available under the Act itself.

In the present case, the petitioners participated before the arbitrator and therefore the remedy lies in Civil Court under Section 34 of the Arbitration Act. Further, the petitioners are aggrieved by the award of interest by the arbitrator and this question has to be gone into by Civil Court under Section 34 of the Arbitration Act. In this writ petition, the question cannot be decided. The petitioners are given liberty to approach the Civil Court in the matter.

The writ petition, with the above observation, is accordingly dismissed.

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(V.V.S.RAO,J)

.09.2005.

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